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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of

Implementation of 911 Act; Use of
N11 Codes and Other Abbreviated
Dialing Arrangements

)
)
) CC Docket No. 92-105
) WT Docket No. 00-110
)

To: The Commission

PETITION FOR RECONSIDERATION OF CLARIFICATION

Maritel, Inc. ("Maritel"), by its attorneys and pursuant to the provisions of Section 1.429 of the Rules and Regulations of the Federal Communications Commission ("FCC" or "Commission"), 47 C.F.R. § 1.429 (1999), hereby submits the following Petition for Reconsideration or Clarification in response to the *Fourth Report and Order and Third Notice of Proposed Rule Making* ("Order") adopted in the above-referenced proceeding.¹ The Order designates 911 as the "national emergency telephone number to be used for reporting emergencies and requesting emergency assistance." Order at ¶ 11. Because the Commission's Order does not fully account for the FCC's previous determination to exempt Maritel and other providers from 911 technical regulations, Maritel respectfully requests the agency to reconsider or clarify its decision.

¹ Maritel seeks reconsideration within thirty days after the Order was placed in the FCC's Office of Public Affairs. 47 C.F.R. § 1.4(b)(2) (1999). Documents in notice and comment rule making proceedings are considered "released" when they are published in the *Federal Register*. 47 C.F.R. § 1.4(b)(1). However, the Order implements Congressional legislation and the agency did not seek public comment before issuing the Order. Further, as of this date, the Order has not been published in the *Federal Register*, despite the fact that two related Notices of Proposed Rule Making were published in the *Federal Register* on September 19, 2000. 65 Fed. Reg. 56752. Accordingly, Maritel presumes that for purposes of Section 1.4 of its rules, the FCC envisions the Order to have been released on August 29, 2000.

I. Background.

Maritel. Maritel is the largest provider of VHF public coast station services in the United States. Its current operations consist of stations throughout much of the coastal United States and U.S. inland waterways each interconnected to Maritel's control switching office located in Gulfport, Mississippi. Maritel actively participated in the FCC's auction of VHF Public Coast ("VPC") station licenses, and was the winning bidder for nine regional licenses. Maritel is in the initial stages of building a North American VPC network that will offer advanced telecommunications services on a cost-effective basis. Upon completion of its VPC network, Maritel will be able to provide state-of-the-art, seamless maritime communications services in all U.S. coastal areas and major inland waterways.

The Order. The *Order* implements the 911 Act.² The *Order*, as noted above, states that 911 shall be the emergency telephone number for use in the United States. The *Order* is broadly-worded, stating that the 911 dialing code "shall be deployed ubiquitously by carriers throughout the United States. . . ." and contains no exemption for any type of wireless communications service. *Order* at ¶ 11. Further, the Initial Regulatory Flexibility Analysis attached to the *Order* suggests that the *Order* covers all commercial mobile radio service ("CMRS") providers, a category that includes Maritel. Thus, the *Order* arguably covers Maritel's VPC operations. Nevertheless, the *Order* notes that only "certain" wireless carriers are subject to 911 regulation, *Order* at ¶ 6, but does not otherwise precisely limit the reach of the *Order* to those particular carriers. Moreover, past Commission statements suggest that the FCC does not envision that 911 obligations will be extended to all wireless carriers.

² Wireless Communications and Public Safety Act of 1999, Pub. L. No. 106-81, enacted Oct. 26, 1999, 113 Stat. 1286 ("911 Act").

Accordingly, Maritel is pleased to have this opportunity to ask that the FCC reconsider or clarify the *Order* to confirm that 911 is not the emergency telephone number for VPC licensees.

III. Discussion

A. The 911 Act Exempts VPC Licensees.

The 911 Act states that “the designation [of 911] shall apply to both wireline and wireless telephone service.” The Act does not define “wireless telephone service” or “wireless.” The 911 Act, however, defines “wireless carrier” as a “provider of commercial mobile services or any other radio communications service that the Federal Communications Commission requires to provide wireless 911 service.”

Maritel should not, therefore, be considered a wireless carrier under the 911 Act, because at the time the 911 Act was enacted, the FCC did not require VPC licensees to provide wireless 911 service. In 1996, the FCC specifically exempted VPC licensees from its 911 technical regulations, stating:

[W]e do not believe that it is appropriate to require other two way voice services, such as . . . Public Coast Stations (Part 80, Subpart J). These services are provided for passengers and crews of airplanes and ocean vessels. We find that passengers and crews do not rely on ground-based rescue operations. Instead, passengers and crews of airplanes rely on other radio communications channels, and passengers and crews of ships rely on internationally approved GMDSS.

Revision of the Commission's Rules to Ensure Compatibility with Enhanced 911 Emergency Calling Systems, CC Docket No. 94-102, Report and Order and Further Notice of Proposed Rulemaking, 11 FCC Rcd 18676 (1996) (sentence fragment in original) (citations omitted).

The Senate Report associated with the 911 Act makes it equally clear that VPC licensees should not be covered by the 911 Act. For example, the Senate Report states that the

911 Act is not expected to “subject any individuals or businesses affected by the [911 Act] to any additional regulation.” The Senate Report also contains other indications that Congress did not intend for the 911 Act to reach the maritime industry. For example, the Senate Report describes current wireless emergency calling confusion with a reference to motorists traveling through numerous states on the interstate highway system; there are no references to caller confusion on the high seas or inland waterways. Further, nothing in the Senate Report, or the 911 Act itself, refers to the maritime industry or VPC licensees in particular.³

Nor is there any indication that Congress, in enacting the 911 Act, intended to modify or partially repeal the FCC’s earlier actions in the CC Docket No. 94-102 rule making proceeding. In a similar circumstance, the FCC found that Congressional action, broadly taken, did not “repeal by implication” the FCC’s authority over a particular subject matter. *Regulatory Treatment Of LEC Provision Of Interexchange Services Originating In The LEC’s Local Exchange Area*, 12 FCC Rcd 15756, ¶ 168 (1997). The same is true here; the 911 Act should not be interpreted to repeal the FCC’s decision to require VPC licensees to comply with Part 80 requirements concerning emergency and distress communications.

Based on the foregoing, the FCC should find that the 911 Act is not intended to cover certain wireless carriers, such as VPC licensees, that are not subject to the FCC’s 911 technical regulations. The FCC should therefore reconsider or clarify its *Order* to indicate that VPC licensees are not expected to participate in efforts to promote the nationwide use of the 911 abbreviated dialing code.

³ Nothing in the 911 Act purports to alter Parts II and II of Title III of the Communications Act of 1934, as amended, which specify certain policies relating to maritime safety communications.

B. The FCC Should Interpret The 911 Act To Exclude VPC Licensees.

Even if the 911 Act could, because of ambiguities in its wording, be interpreted to cover VPC licensees, the Commission should interpret the 911 Act to exclude VPC licensees. If the 911 Act is silent or ambiguous as to whether VPC licenses are covered, the FCC's interpretation of the 911 Act in the manner suggested herein will be upheld, provided that it is reasonable. *Chevron U.S.A., Inc. v. Natural Resources Defense Council, Inc.*, 467 U.S. 837, 842-43 (1984). Such an interpretation would serve the public interest because inclusion of VPC licensees in 911 regulatory schemes would actually hinder the public safety objectives underlying the 911 Act.

The maritime industry was the first U.S. industry to make particular use of radio technology— primarily as a result of at-sea disasters such as the sinking of the Titanic in 1912. In fact, regulation of radio devices for the maritime industry pre-dates the Communications Act of 1934, and the FCC.⁴ As a Part 80 maritime licensee, Maritel must therefore comply with both domestic and international distress and emergency regulations unique to the maritime industry.⁵ These regulations generally require Maritel to route emergency calls to one of the U.S. Coast Guard's forty-five Search and Rescue Coordination Centers. Routing emergency calls in a different manner would, in most cases, delay assistance to the caller because most land-based emergency dispatch personnel are necessarily not as well trained as

⁴ The Wireless Ship Act of 1910 delegated to the Secretary of Commerce and Labor the authority to adopt regulations to require radio devices on passenger vessels. Pub. L. No. 262, 36 Stat. 629 (1910).

⁵ The FCC has stated that these services “provide a vital emergency radio link, similar to the terrestrial 911 system, to ensure safety of life and property in the marine environment.” *Technology for Communications International*, 14 FCC Rcd 16173, ¶ 11 (1999). Thus, while not identical to 911 dialing, the FCC has recognized that maritime emergency and distress calling systems serve the public in a similar fashion.

the U.S. Coast Guard to respond to emergencies on the high seas or inland waterways.⁶

The boating and commercial shipping and fishing industries have for years been familiar with distress and emergency transmission requirements on the high seas and inland waterways. Imposition of a 911 requirement on VPC licensees would only confuse these radio users, many of whom are also familiar with, and also comply with, internationally-mandated maritime communications safety standards, including the Global Maritime Distress and Safety System ("GMDSS"). GMDSS is an international safety system that was first adopted by the FCC in 1992, and implements the international Safety of Life at Sea ("SOLAS") Convention.⁷ GMDSS has no 911 component. FCC action to require the use of 911 dialing codes by VPC licensees would therefore conflict with internationally-adopted regulations, confuse customers, and result in a diminution of safety on the high seas and inland waterways.

Accordingly, the FCC should promptly to declare that VPC licensees are not expected to provide 911 services and are exempted from the 911 Act. By doing so, the FCC will avoid potential consumer uncertainty that may result from the *Order*.

⁶ Most emergency dispatch personnel, to the best of Maritel's knowledge, are not familiar with Coast Guard rescue procedures, maritime terminology, or maritime navigation. By contrast, search and rescue is one of the U.S. Coast Guard's oldest missions; the Coast Guard averages over 50,000 emergency responses per year, nationwide, and is considered a worldwide leader in the field of search and rescue.

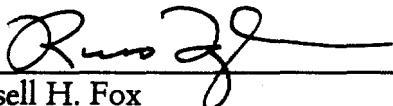
⁷ *Amendment of Parts 13 and 80 of the Commission's Rules to Implement the Global Maritime Distress and Safety System (GMDSS) to Improve the Safety of Life at Sea, Report and Order*, 7 FCC Rcd 951 (1992).

WHEREFORE, THE PREMISES CONSIDERED, Maritel submits the foregoing
Petition for Reconsideration and urges the Commission to act in a manner consistent with the
views expressed herein.

Respectfully submitted,

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